

AMENDED IN ASSEMBLY AUGUST 7, 2006

AMENDED IN ASSEMBLY JUNE 20, 2006

AMENDED IN ASSEMBLY JUNE 30, 2005

AMENDED IN SENATE MAY 27, 2005

AMENDED IN SENATE APRIL 26, 2005

AMENDED IN SENATE MARCH 31, 2005

SENATE BILL

No. 419

Introduced by Senator Simitian

February 17, 2005

An act to add ~~Chapter 6.95.1~~ *Article 7.7* (commencing with Section 25546 7674) to *Chapter 1* of Division 20 4 of the ~~Health and Safety~~ *Public Utilities* Code, relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

SB 419, as amended, Simitian. Hazardous materials: transportation: railroad tank cars.

Existing law prohibits any person from transporting hazardous waste in this state unless the person holds a valid registration issued by the Department of Toxic Substances Control. Existing law requires a railroad corporation transporting hazardous materials to submit to the Public Utilities Commission (*PUC*), a system map containing information, as specified, and to the Office of Emergency Services a copy of a publication that identifies emergency handling guidelines for surface transportation of hazardous material.

Existing law requires, in the event of a release or threatened release of hazardous material from a railcar, a railroad corporation to provide

information to the emergency response agency, as specified. Existing law requires the ~~Public Utilities Commission~~ PUC to submit to the Legislature a report on railroad line sites that it finds to be hazardous with information, as specified.

Existing law requires businesses that handle hazardous materials to maintain an inventory of hazardous materials and to prepare a business plan relating to the handling and the response to a release or threatened release of hazardous materials.

This bill would require the ~~Office of Emergency Services~~ PUC to create and maintain a hazardous rail tank car database, which would contain specified information, including a current certificate of compliance provided by the legal owner or lessee of the rail tank car stating that the rail tank car meets certain standards. The bill would authorize the ~~office~~ PUC to charge a rail tank car owner or lessee a fee sufficient to maintain the database and would provide that a rail tank car that is listed on the database is a registered hazardous tank car. The bill would require the legal owner or lessee of a hazardous rail tank car to present to an official of the railroad, at the point of transfer for the hazardous tank car, the certificate of compliance when delivering a hazardous tank car containing certain hazardous materials to a railroad.

The bill would prohibit the delivery of certain hazardous materials above certain threshold quantities, as specified, by rail, unless the hazardous material is transported in a hazardous tank car registered with the office. *The bill would authorize the assessment of specified civil penalties against a railroad, rail tank car owner, or lessor or lessee of a rail tank car that knowingly violates this requirement, and provides for the disbursement of the collected civil penalties.*

The bill would require the ~~office~~ PUC to apply for a waiver, if the ~~office~~ PUC determines that the bill's requirements could be preempted by the federal Hazardous Materials Transportation Authorization Act of 1994.

The bill would become operative on February 1, 2007. The bill would authorize the ~~Office of Emergency Services~~ PUC to delay until January 1, 2008, the enforcement of the requirement to transport hazardous material in a hazardous tank car registered with the ~~office~~ PUC, if the ~~office~~ PUC finds, before February 1, 2007, that there is an insufficient number of hazardous rail tank cars to meet commercial requirements. The bill would, in addition, authorize the ~~office~~ PUC, if the ~~office~~ PUC delays that enforcement to January 1, 2008, to delay

that enforcement for an additional year if the ~~office~~ PUC finds on or before September 1st of each year that there is an insufficient number of hazardous rail tank cars to meet commercial needs for the following year. The bill would authorize the ~~office~~ PUC to enforce that requirement if the ~~office~~ PUC determines that the insufficiency in the number of hazardous rail tank cars to meet commercial requirements is de minimis. The bill would prohibit the ~~office~~ PUC from delaying that enforcement beyond January 1, 2012.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 7.7 (commencing with Section 7674) is
2 added to Chapter 1 of Division 4 of the Public Utilities Code, to
3 read:

4
5 Article 7.7. Transportation of Hazardous Materials by Rail
6 Tank Car

7
8 7674. The Legislature finds and declares all of the following:

9 (a) The federal government has not acted to prevent the
10 terrorist threat resulting from the transportation of dangerous
11 quantities of ultrahazardous materials through highly populated
12 urban corridors.

13 (b) A terrorist attack on a shipment of, or an accidental leak
14 of, poisonous gas inhalants in the state could result in tens of
15 thousands of deaths and economic damage in the billions of
16 dollars.

17 (c) Requiring rail tank cars to contain containment
18 technologies certified as appropriate by the American Society of
19 Mechanical Engineers to ship ultrahazardous materials through
20 an urban corridor causes no significant impact on interstate
21 commerce.

22 (d) The citizens of the state should have a reasonable
23 expectation that hazardous materials are being shipped in the
24 safest manner possible.

25 (e) One-half of the nation's approximately 60,000 chemical
26 tank cars do not meet industry safety standards as of 2004.

1 (f) Puncture resistant tank cars are available today to the
2 railroad and chemical industries and their use would greatly
3 enhance security and public safety.

4 (g) In March 2005, in Salt Lake City, Utah, a railcar leaking
5 toxic chemicals sent plumes of gas into the air, forcing the
6 evacuation of more than 6,000 people. Fifteen hours after the
7 discovery of the leak, officials still were not certain of the
8 contents of the leaking tanker. Officials could not determine from
9 the owner of the tanker what was in the tanker and at what
10 concentration.

11 (h) On January 6, 2005, two freight trains collided in
12 Graniteville, South Carolina, approximately 10 miles northeast
13 of Augusta, Georgia, releasing an estimated 11,500 gallons of
14 chlorine gas, which caused nine deaths and sent at least 529
15 persons seeking medical treatment for possible chlorine
16 exposure.

17 (i) In June 2004, a moving train struck a stationary train at a
18 rail substation in Texas, causing a derailment. One tanker car
19 was punctured, releasing approximately 90,000 pounds of
20 chlorine gas. At least 60,000 pounds of chlorine gas reacted with
21 sodium hydroxide to form sodium hypochlorite, a corrosive. Also
22 released were approximately 78,000 gallons of urea fertilizer
23 and 7,000 gallons of diesel fuel, which when mixed form an
24 explosive mixture. Forty-four persons were injured, including
25 three who died.

26 (j) In August 2002, approximately 16,900 pounds of chlorine
27 gas were released from a railroad tanker car when a flex hose
28 ruptured during unloading at a chemical plant in Missouri. An
29 automatic shutoff valve on the car and an emergency shutoff
30 system at the plant failed to work as backup prevention
31 measures. Sixty-seven persons were injured.

32 (k) The Cantera Loop, five miles north of Dunsmuir,
33 California, was the site of a tragic derailment and toxic chemical
34 spill in 1991. That spill killed everything in the river for 40 miles,
35 including the wild trout population. The spill was contained just
36 before it reached Shasta Lake, 43 miles to the south, a major
37 drinking water supply for much of the state. In addition to the
38 destruction to the environment, the tourism dependent economy
39 of the Sacramento River Canyon was devastated. Businesses in
40 Dunsmuir closed and real estate value in Dunsmuir plummeted.

1 *Dunsmuir almost became a ghost town. Recovery of the fishery*
2 *took 10 years and Dunsmuir is just showing signs of becoming a*
3 *tourist destination.*

4 (l) *Again in July 2003, an 86-car Union Pacific freight train*
5 *derailed three miles north of Dunsmuir. Fifteen cars jumped the*
6 *track and a few ended up in the Sacramento River. At the time of*
7 *the derailment, the cars in the river were empty.*

8 (m) *On January 15, 2005, the Centers for Disease Control and*
9 *Prevention issued a report on the South Carolina accident*
10 *recommending that government officials and private companies*
11 *“route hazardous materials away from densely populated areas,*
12 *where feasible” to reduce risks.*

13 (n) *The federal government considers these ultrahazardous*
14 *cargoes as “potential weapons of mass destruction,” and very*
15 *attractive targets for terrorists. A study by the Naval Research*
16 *Laboratory reveals that 100 people per second could die if a*
17 *terrorist were to blow up a tank car full of chlorine gas.*

18 (o) *Since September 11, 2001, the federal government has*
19 *taken swift action to standardize and heighten security measures*
20 *throughout our nation’s airports and airlines, but has left our*
21 *nation’s railroads virtually untouched.*

22 (p) *A 2003 Government Accounting Office report concluded*
23 *that it is unclear whether or not the railroad companies’ own*
24 *initiatives have effectively deterred terrorism because there are*
25 *no federal standards.*

26 7674.1. *For the purposes of this article, the following terms*
27 *have the following meanings:*

28 (a) *“Commission” means the Public Utilities Commission.*

29 (b) *“Federal act” means the Hazardous Materials*
30 *Transportation Authorization Act of 1994 (Chapter 51*
31 *(commencing with Section 5101) of Title 49 of the United States*
32 *Code), as amended.*

33 (c) *“Person” has the same meaning as defined in Section*
34 *25118 of the Health and Safety Code.*

35 (d) *“Registered hazardous tank car” means a rail tank car*
36 *listed on the database created pursuant to Section 7674.2.*

37 7674.2. (a) *The commission shall create and maintain a*
38 *hazardous rail tank car database, which shall contain all of the*
39 *following information:*

1 (1) A registration number and year of manufacture for a rail
2 tank car that will transport a hazardous material specified in
3 Section 7674.3 in or through California.

4 (2) A current certificate of compliance provided by the legal
5 owner or lessee of the rail tank car stating that the rail tank car
6 meets both of the following standards:

7 (A) The rail tank car is in compliance with all construction
8 and safety standards for a rail tank car adopted by the American
9 Association of Railroads, M1002, as of January 1, 2006,
10 regardless of the date of manufacture of the rail tank car.

11 (B) The rail tank car is in compliance with Part 105
12 (commencing with Section 105.5) to Part 180 (commencing with
13 Section 180.1), inclusive, of Chapter I of Subtitle B of Title 49 of
14 the Code of Federal Regulations.

15 (b) The owner or lessee of a rail tank car shall annually renew
16 the certificate specified in paragraph (2) of subdivision (a).

17 (c) The commission may charge the rail tank car owner or
18 lessee a fee sufficient to maintain the database for hazardous
19 tank car registrants.

20 (d) The legal owner or lessee of a registered hazardous tank
21 car shall present to an official of the railroad, at the point of
22 transfer for the hazardous tank car, the certificate of compliance
23 specified in paragraph (2) of subdivision (a) when delivering a
24 hazardous tank car containing a hazardous material specified in
25 Section 7674.3 to a railroad.

26 (e) If the commission determines that a requirement imposed
27 pursuant to this article could be preempted by the federal act, the
28 office shall apply to the Secretary of Transportation for a waiver
29 of preemption pursuant to subsection (e) of Section 5125 of Title
30 49 of the United States Code.

31 7674.3. It is unlawful for a person to deliver for transport by
32 rail through or in the state, any of the following, unless the
33 hazardous material is transported in a hazardous tank car
34 registered with the commission pursuant to Section 7674.2:

35 (a) Explosives of class 1, division 1.1, or class 1, division 1.2,
36 as designated in Section 173.2 of Title 49 of the Code of Federal
37 Regulations, in a quantity greater than 500 kilograms.

38 (b) Flammable gases of class 2, division 2.1, as designated in
39 Section 173.2 of Title 49 of the Code of Federal Regulations, in a
40 quantity greater than 10,000 liters.

1 (c) *Poisonous gases of class 2, division 2.3, as designated by*
2 *Section 173.2 of Title 49 of the Code of Federal Regulations and*
3 *belonging to hazardous zone A or B as defined in Section*
4 *173.116 of Title 49 of the Code of Federal Regulations, in a*
5 *quantity greater than 500 liters.*

6 (d) *Poisonous material, other than gases, of class 6, division*
7 *6.1, or class 1, division 1.2, as designated by Section 173.2 of*
8 *Title 49 of the Code of Federal Regulations and belonging to*
9 *hazardous zone A or B as defined in Section 173.133 of Title 49*
10 *of the Code of Federal Regulations, in a quantity greater than*
11 *1,000 kilograms.*

12 7674.4. (a) *A railroad, owner of a rail tank car, or lessor or*
13 *lessee of a rail tank car, designed to carry hazardous materials,*
14 *who knowingly violates Section 7674.3 shall be subject to a daily*
15 *civil penalty, for the first violation in an amount that does not*
16 *exceed ten thousand dollars (\$10,000).*

17 (b) *A railroad, owner of a rail tank car, or lessor or lessee of*
18 *a rail tank car, designed to carry hazardous materials who*
19 *knowingly violates Section 7674.3 for a second or subsequent*
20 *violation shall be subject to a daily civil penalty in an amount*
21 *that does not exceed twenty-five thousand dollars (\$25,000). A*
22 *second or subsequent violation occurs when a rail tank car*
23 *enters the state a second or subsequent time without proper*
24 *registration.*

25 (c) *A civil penalty assessed pursuant to subdivision (a) or (b)*
26 *shall accrue daily for each rail tank car not properly registered*
27 *pursuant to this article and shall continue to accrue until the rail*
28 *tank car either registers with the commission or leaves the state.*

29 (d) *A railroad, owner of a rail tank car, or lessor or lessee of*
30 *a rail tank car, designed to carry hazardous materials, knowingly*
31 *violates Section 7674.3 when it transports into the state, or*
32 *causes to be transported into the state, a substance listed in*
33 *Section 7674.3 in a rail tank car that is not registered with the*
34 *commission.*

35 (e) *The civil penalties collected pursuant to this section shall*
36 *be apportioned as follows:*

37 (1) *Fifty percent shall be deposited in the Environmental*
38 *Enforcement and Training Account established pursuant to*
39 *Section 14303 of the Penal Code, and used for the purposes of*

1 Title 13 (commencing with Section 14300) of Part 4 of the Penal
2 Code.

3 (2) Fifty percent shall be deposited in the Public Utilities
4 Commission Transportation Reimbursement Account in the
5 General Fund.

6 (f) This section shall not be construed to prohibit the
7 imposition of any equitable remedy deemed appropriate by a
8 court of competent jurisdiction.

9 7674.5. (a) This chapter shall become operative on February
10 1, 2007.

11 (b) (1) If, prior to February 1, 2007, the commission makes a
12 finding, based on substantial evidence, that there is an
13 insufficient number of hazardous rail tank cars to meet
14 commercial requirements, the commission may delay the
15 enforcement of Section 7674.3 to January 1, 2008.

16 (2) If the commission delays the enforcement of Section 7674.3
17 pursuant to paragraph (1), the commission may delay the
18 enforcement of Section 7674.3 for an additional year upon a
19 finding, made on or before September 1, 2007, and September 1
20 of each year thereafter; that there is an insufficient number of
21 hazardous rail tank cars to meet commercial requirements for
22 the following year. The commission shall not delay enforcement
23 of Section 7674.3 beyond January 1, 2012.

24 (3) Notwithstanding paragraphs (1) and (2), the commission
25 may enforce the requirements of Section 7674.3 if the
26 commission determines that the insufficiency in the number of
27 hazardous rail tank cars to meet commercial requirements is de
28 minimis.

29 ~~SECTION 1. Chapter 6.95.1 (commencing with Section~~
30 ~~25546) is added to Division 20 of the Health and Safety Code, to~~
31 ~~read:~~

32
33 ~~CHAPTER 6.95.1. TRANSPORTATION OF HAZARDOUS~~
34 ~~MATERIALS~~
35

36 ~~25546. The Legislature finds and declares all of the~~
37 ~~following:~~

38 ~~(a) The federal government has not acted to prevent the~~
39 ~~terrorist threat resulting from the transportation of dangerous~~

1 quantities of ultrahazardous materials through highly populated
2 urban corridors.

3 (b) A terrorist attack on a shipment of, or an accidental leak of,
4 poisonous gas inhalants in the state could result in tens of
5 thousands of deaths and economic damage in the billions of
6 dollars.

7 (c) Requiring rail tank cars to contain containment
8 technologies certified as appropriate by the American Society of
9 Mechanical Engineers to ship ultrahazardous materials through
10 an urban corridor causes no significant impact on interstate
11 commerce.

12 (d) The citizens of the state should have a reasonable
13 expectation that hazardous materials are being shipped in the
14 safest manner possible.

15 (e) One-half of the nation's approximately 60,000 chemical
16 tank cars do not meet industry safety standards as of 2004.

17 (f) Puncture resistant tank cars are available today to the
18 railroad and chemical industries and their use would greatly
19 enhance security and public safety.

20 (g) In March of 2005, in Salt Lake City, Utah, a railcar leaking
21 toxic chemicals sent plumes of gas into the air, forcing the
22 evacuation of more than 6,000 people. Fifteen hours after the
23 discovery of the leak, officials still were not certain of the
24 contents of the leaking tanker. Officials could not determine from
25 the owner of the tanker what was in the tanker and at what
26 concentration.

27 (h) On January 6, 2005, two freight trains collided in
28 Graniteville, South Carolina, approximately 10 miles northeast of
29 Augusta, Georgia, releasing an estimated 11,500 gallons of
30 chlorine gas, which caused nine deaths and sent at least 529
31 persons seeking medical treatment for possible chlorine
32 exposure.

33 (i) In June of 2004, a moving train struck a stationary train at a
34 rail substation in Texas, causing a derailment. One tanker car was
35 punctured, releasing approximately 90,000 pounds of chlorine
36 gas. At least 60,000 pounds of chlorine gas reacted with sodium
37 hydroxide to form sodium hypochlorite, a corrosive. Also
38 released were approximately 78,000 gallons of urea fertilizer and
39 7,000 gallons of diesel fuel, which when mixed form an

1 explosive mixture. Forty-four persons were injured, including
2 three who died.

3 (j) In August of 2002, approximately 16,900 pounds of
4 chlorine gas were released from a railroad tanker car when a flex
5 hose ruptured during unloading at a chemical plant in Missouri.
6 An automatic shutoff valve on the car and an emergency shutoff
7 system at the plant failed to work as backup prevention measures.
8 Sixty-seven persons were injured.

9 (k) The Cantera Loop, five miles north of Dunsmuir,
10 California, was the site of a tragic derailment and toxic chemical
11 spill in 1991. That spill killed everything in the river for 40
12 miles, including the wild trout population. The spill was
13 contained just before it reached Shasta Lake, 43 miles to the
14 south, a major drinking water supply for much of the state. In
15 addition to the destruction to the environment, the tourism
16 dependent economy of the Sacramento River Canyon was
17 devastated. Businesses in Dunsmuir closed and real estate value
18 in Dunsmuir plummeted. Dunsmuir almost became a ghost town.
19 Recovery of the fishery took 10 years and Dunsmuir is just
20 showing signs of becoming a tourist destination.

21 (l) Again in July of 2003, an 86-car Union Pacific freight train
22 derailed three miles north of Dunsmuir. Fifteen cars jumped the
23 track and a few ended up in the Sacramento River. At the time of
24 the derailment, the cars in the river were empty.

25 (m) On January 15, 2005, the Centers for Disease Control and
26 Prevention issued a report on the South Carolina accident
27 recommending that government officials and private companies
28 “route hazardous materials away from densely populated areas,
29 where feasible” to reduce risks.

30 (n) The federal government considers these ultrahazardous
31 cargoes as “potential weapons of mass destruction,” and very
32 attractive targets for terrorists. A study by the Naval Research
33 Laboratory reveals that 100 people per second could die if a
34 terrorist were to blow up a tank car full of chlorine gas.

35 (o) Since September 11, 2001, the federal government has
36 taken swift action to standardize and heighten security measures
37 throughout our nation’s airports and airlines, but have left our
38 nation’s railroads virtually untouched.

39 (p) A 2003 Government Accounting Office report concluded
40 that it is unclear whether or not the railroad companies’ own

1 ~~initiatives have effectively deterred terrorism because there are~~
2 ~~no federal standards.~~

3 ~~25546.1. For the purposes of this chapter, the following terms~~
4 ~~have the following meanings:~~

5 ~~(a) “Federal act” means the Hazardous Materials~~
6 ~~Transportation Authorization Act of 1994 (Chapter 51~~
7 ~~(commencing with Section 5101) of Title 49 of the United States~~
8 ~~Code), as amended.~~

9 ~~(b) “Office” means the Office of Emergency Services.~~

10 ~~(c) “Person” has the same meaning as defined in Section~~
11 ~~25118.~~

12 ~~(d) “Registered hazardous tank car” means a rail tank car~~
13 ~~listed on the database created pursuant to Section 25546.2.~~

14 ~~25546.2. (a) The office shall create and maintain a hazardous~~
15 ~~rail tank car database, which shall contain all of the following~~
16 ~~information:~~

17 ~~(1) A registration number and year of manufacture for a rail~~
18 ~~tank car that will transport a hazardous material specified in~~
19 ~~Section 25546.3 in or through California.~~

20 ~~(2) A current certificate of compliance provided by the legal~~
21 ~~owner or lessee of the rail tank car stating that the rail tank car~~
22 ~~meets both of the following standards:~~

23 ~~(A) The rail tank car is in compliance with all construction and~~
24 ~~safety standards for a rail tank car adopted by the American~~
25 ~~Association of Railroads, M1002, as of January 1, 2006,~~
26 ~~regardless of the date of manufacture of the rail tank car.~~

27 ~~(B) The rail tank car is in compliance with Part 105~~
28 ~~(commencing with Section 105.5) to Part 180 (commencing with~~
29 ~~Section 180.1), inclusive, of Chapter I of Subtitle B of Title 49 of~~
30 ~~the Code of Federal Regulations.~~

31 ~~(b) The owner or lessee of a rail tank car shall annually renew~~
32 ~~the certificate specified in paragraph (2) of subdivision (a).~~

33 ~~(c) The office may charge the rail tank car owner or lessee a~~
34 ~~fee sufficient to maintain the database for hazardous tank car~~
35 ~~registrants.~~

36 ~~(d) The legal owner or lessee of a registered hazardous tank~~
37 ~~car shall present to an official of the railroad, at the point of~~
38 ~~transfer for the hazardous tank car, the certificate of compliance~~
39 ~~specified in paragraph (2) of subdivision (a) when delivering a~~

~~hazardous tank car containing a hazardous material specified in Section 25546.3 to a railroad.~~

~~(e) If the office determines that a requirement imposed pursuant to this chapter could be preempted by the federal act, the office shall apply to the Secretary of Transportation for a waiver of preemption pursuant to subsection (e) of Section 5125 of Title 49 of the United States Code.~~

~~25546.3. It is unlawful for a person to deliver for transport by rail through or in the state, any of the following, unless the hazardous material is transported in a hazardous tank car registered with the office pursuant to Section 25546.2:~~

~~(a) Explosives of class 1, division 1.1, or class 1, division 1.2, as designated in Section 173.2 of Title 49 of the Code of Federal Regulations, in a quantity greater than 500 kilograms.~~

~~(b) Flammable gases of class 2, division 2.1, as designated in Section 173.2 of Title 49 of the Code of Federal Regulations, in a quantity greater than 10,000 liters.~~

~~(c) Poisonous gases of class 2, division 2.3, as designated by Section 173.2 of Title 49 of the Code of Federal Regulations and belonging to hazardous zone A or B as defined in Section 173.116 of Title 49 of the Code of Federal Regulations, in a quantity greater than 500 liters.~~

~~(d) Poisonous material, other than gases, of class 6, division 6.1, or class 1, division 1.2, as designated by Section 173.2 of Title 49 of the Code of Federal Regulations and belonging to hazardous zone A or B as defined in Section 173.133 of Title 49 of the Code of Federal Regulations, in a quantity greater than 1,000 kilograms.~~

~~25546.4. (a) This chapter shall become operative on February 1, 2007.~~

~~(b) (1) If, prior to February 1, 2007, the office makes a finding, based on substantial evidence, that there is an insufficient number of hazardous rail tank cars to meet commercial requirements, the office may delay the enforcement of Section 25546.3 to January 1, 2008.~~

~~(2) If the office delays the enforcement of Section 25546.3 pursuant to paragraph (1), the office may delay the enforcement of Section 25546.3 for an additional year upon a finding, made on or before September 1, 2007, and September 1st of each year thereafter, that there is an insufficient number of hazardous rail~~

1 ~~tank cars to meet commercial requirements for the following~~
2 ~~year. The office shall not delay enforcement of Section 25546.3~~
3 ~~beyond January 1, 2012.~~

4 ~~(3) Notwithstanding paragraphs (1) and (2), the office may~~
5 ~~enforce the requirements of Section 25546.3 if the office~~
6 ~~determines that the insufficiency in the number of hazardous rail~~
7 ~~tank cars to meet commercial requirements is de minimis.~~

8 SEC. 2. The provisions of this act are severable. If any
9 provision of this act or its application is held invalid, that
10 invalidity shall not affect other provisions or applications that can
11 be given effect without the invalid provision or application.